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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,490	11/26/2003	Dawn Sikorski	325904US0	9538
22850	7590	03/06/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER	
			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			03/06/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/723,490

Applicant(s)

SIKORSKI, DAWN

Examiner

Lien T. Tran

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 14-19 and 46-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-19, 46-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 15 and 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 is vague and indefinite. The way the claim is written; it is not clear if the dough has a protein content greater than about 8% or the flour has a protein content greater than about 8%.

Claim 57 has the same problem as claim 15.

Claims 1-10, 14-19, 46-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto et al (EP 0990391A1) in view of Gimelli et al (6596336), Daniels et al (6447831) and Widlak (6387433).

Goto et al disclose an oil and fat composition comprising 1,3 diacylglycerol oil in amount of 15-95%. The fatty acids comprised by the diacylglycerol include 55% or more of unsaturated fatty acids. The oil and fat composition is used in products such as cakes, cookies , pies, breads etc... The amount of oil and fat of the food product is in the range of 3-95%. Food materials such as emulsifiers, lecithin, gum, colorant etc... can be added. (see page 2 lines 40-58, page 4 lines 20-58 and the examples.)

Goto et al do not disclose substitute for all of the triacylglycerol oil and fat, ingredients as in claims 14, 47, the emulsifier is sodium stearoyl lactylate, the foods are brownies and muffin and the protein content in the product.

Gimelli et al disclose a sauce emulsion; they teach to use sodium stearoyl lactylate as the emulsifier (see col. 3 lines 53-66)

Daniels et al disclose a fat composition for use as spreadable product or as frying medium; they teach to use sodium stearoyl lactylate as emulsifier (see col. 4 lines 1-5).

Widlak discloses a fluid emulsified shortening composition. Widlak teaches to use salts of stearoyl lactylate as one of the emulsifiers. The emulsifiers give softer crumb texture in the bread product. (see col. 3 lines 52-65)

It would have been obvious to one skilled in the art to replace all of the triacylglycerol when desiring a healthier product; this would have been an obvious matter of preference. Goto et al disclose to use emulsifier in the fat composition and do not limit the emulsifier to a specific one. It would have been obvious to one skill in the art to use sodium steroyl lactylate because it is a well known emulsifier that is used in many types of products such as emulsion, shortening composition and fat composition as exemplified in the prior art to Gimelli et al, Daniels et al and Widlak. The Goto et al product is a fat composition; thus, one would have been motivated to use sodium steroyl lactylate because it is shown by Daniels et al and Widlak that such emulsifier is used in fat composition. As to the improved crumb softness and emulsion stability, emulsifier by definition ,as shown in Widlak, is a substance that promotes the formation and improves the stability of emulsion (see col. 4 lines 53-55). Widlak also teaches emulsifier such as stearoyl lactylate produces bread which has a softer crumb texture. Thus, the property of improved emulsion stability and crumb softness will be inherent in the Goto et al product when stearoyl lactylate is added. It would have been obvious to make other baked products such as muffin and brownies when desiring the healthy oil composition in such products. With regard to claims 15 and 57, it is not clear if the

dough or the flour has the protein content claimed. In any event, it is known in the art that the protein content of flour varies. For example, soft flour has a lower protein content than hard wheat flour, it would have been obvious to use flour with any varying protein content depending on the protein content wanted. It would also have been obvious to formulate the product with any protein level depending on the nutrition desired. This can readily be determined by one skilled in the art.

In the RCE filed 2/11/09, applicant comments on the unexpected result of using sodium stearoyl lactylate. New references are added to show that sodium stearoyl lactylate is a very commonly used emulsifier and that such usage would have been obvious to one skilled in the art because Goto et al teach to add emulsifier to the composition. The property of improved emulsion stability and crumb softness is inherent in the Goto et al composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 2, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794